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C O N F I D E N T I A L SECTION 01 OF 02 DHAKA 003063

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SUBJECT: ELECTION COMMISSIONER PLEDGES TO IMPLEMENT COURT
RULING ON VOTER LIST

Classified By: Ambassador Patricia Butenis, reason para 1.4 d.

¶1. (C) Summary. CEC Aziz promised Ambassador he will fully honor a Supreme Court order to revise rather than create a brand new voter list. He charged a "powerful section" (the Awami League) and the media with misrepresenting his actions to spread chaos and undermine elections. Despite calls for him to resign, Aziz seems determined to press on. End Summary.

¶2. (SBU) On May 23, the five-member Appellate Panel of the Supreme Court unanimously rejected Chief Election Commissioner Aziz's appeal against a January 4 High Court directive to update the voter list prepared in the year 2000 instead of creating a brand new one. Also on May 23, a High Court panel asked Aziz to explain why he should not be charged with contempt proceedings for defying the earlier order on the voter list -- a stunning rebuke for a serving High Court justice.

¶3. (SBU) The controversy over the voter list arose when two now-retired AL-appointed Election Commissioners objected to Aziz's decision to prepare a new list for the upcoming election in accordance with long-standing Bangladeshi practice. They argued that, despite precedent, the relevant law actually provided only for updating an existing list. When Aziz proceeded with his plan, lawyers representing the opposition Awami League filed a High Court writ challenging his action, and obtained an order for the EC to update the existing list.

¶4. (C) Eminent lawyer Kamal Hussein, who was part of the AL legal team, told us on May 24 that he was delighted with what he said was the Supreme Court's "clear cut" ruling in favor of a revised list. He had feared, he said, a mixed decision that would be subjected to conflicting interpretation and delay. Hussein stated his primary objective in going to court was to expose Aziz's "partisanship" and "incompetence" since the list itself was unlikely to decide who won or lost the election

¶5. (C) Attorney General A.J. Mohammed Ali played it differently. He told us that although the Appellate Panel rejected the CEC's appeal, it modified the January 4 High Court observations, and that close study of the text is needed to reach the right conclusions. Election Commissioner Zakaria told us that the EC could not comment on the ruling until it received the written judgment.

¶6. (C) On May 25, Aziz promised Ambassador, during their previously scheduled introductory meeting, that he has a constitutional obligation to implement the May 23 ruling and that he would do so without equivocation. The EC, he said,

will follow the written judgment "word for word" once it is received from the court, which he expected would be by the end of the day. In the interim, the EC has already (contrary to press reports) stopped working on a new list to honor the spirit of the judgment. Aziz claimed he had made the same pledge to the press yesterday but that they had declined to report it, and told the Ambassador that she was free to quote him publicly. Aziz estimated it would take three months to revise the list.

¶7. (C) Aziz defended his voter list, saying its increase in voters was only 22.4 percent while the 2000 list prepared under the AL government showed a 33.93 percent jump. As justification for a brand new list, he cited the 2005 NDI survey indicating 6.4 million "fake" voters and an EU letter in the year 2000 identifying 13 million "fake" voters in the then-new list. Ambassador pointed out that in percentage terms, the NDI figure was relatively low, and that most of those discrepancies appeared to stem from migration and duplication, not fraud.

¶8. (C) According to Aziz, "a powerful section here, including the media, wants chaos and confusion, not elections," and seeks to discredit all institutions involved with the electoral process. He sought unspecified USG support several times for Bangladeshi democracy, while maintaining that the EC itself has the resources and authority to exercise its mandate successfully.

¶9. (C) Asked to comment on the AL's proposed electoral reforms, Aziz talked instead about two presidential ordinances issued during the end of the last AL government but quickly revoked under pressure from "a certain party" that would have disqualified parliamentary candidates for gross campaign irregularities and if they were slapped with a

DHAKA 00003063 002 OF 002

contempt of court finding. He also proposed giving political parties equal television time in exchange for limiting the scope of allowable local campaign activities, in terms of processions and advertising, and holding them accountable to realistic campaign spending limits.

¶10. (C) Comment: Aziz has been humbled by the twin court actions charging him with contempt and repudiating his interpretation of the law, which means the nearly USD 10 million in taka the EC reportedly spent to devise a new list was wasted. Nevertheless, Aziz gave no hint that he might step back from his public assertions earlier this week that he would not resign. Whether Aziz can ride out calls key newspapers for him to quit is unclear, but his professed readiness to implement the Supreme Court ruling might bring him some relief. In a subsequent courtesy call with Ambassador, Chief Justice Mudassir told her that the written judgment would not be ready by today, which means, since the court goes into recess tomorrow for 15 days, public confusion may persist about what the EC intends to do.

¶11. (C) However, the list itself is not the real issue. For the AL, it is about embarrassing the CEC, undermining the credibility of the electoral process, and preserving a list that is presumably more AL friendly than anything it is likely to get now, even if it did lose with that list. Bangladesh has always created brand new voter lists, and more effective media outreach might have mitigated the controversy, but Aziz is no out-manuevered technocrat. His complaints about actions from a "powerful" section reflects a clear anti-AL bias, as do his reform proposals since limiting local campaign activities would disproportionately affect the party with the superior grassroots organization, which happens to be the AL.

BUTENIS